

AMENDED IN ASSEMBLY MAY 15, 2003

AMENDED IN ASSEMBLY MAY 5, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

ASSEMBLY BILL

No. 1541

**Introduced by Assembly Member Montanez
(Coauthor: Assembly Member Firebaugh)**

February 21, 2003

An act to amend Section 13385 of the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

AB 1541, as amended, Montanez. Waste discharge requirements: penalties.

Existing law, the Porter-Cologne Water Quality Control Act, requires the imposition of a mandatory minimum penalty in the amount of \$3,000 for certain violations of waste discharge requirements, including for each serious violation, as defined, and, under certain circumstances, for a violation of a waste discharge requirement effluent limitation, a failure to file a waste discharge report, or a violation of a toxicity discharge limitation. The act requires funds collected pursuant to the imposition of these penalties to be deposited in the State Water Pollution Cleanup and Abatement Account.

This bill would classify a failure to file certain monitoring reports relating to the discharge of pollutants or dredged or fill material with the State Water Resources Control Board as required pursuant to a permit issued under the national pollutant discharge elimination system (NPDES) as a “serious violation” for the purposes of these provisions and would make that serious violation subject to a penalty of \$3,000 for

each 30-day period a report is not submitted as required. The bill would require the penalties imposed for a failure to file one or more of these reports to be deposited in ~~a subaccount~~ of the State Water Pollution Cleanup and Abatement Account for expenditure by the state board, upon appropriation by the Legislature, to carry out the act.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 13385 of the Water Code is amended to
2 read:
3 13385. (a) Any person who violates any of the following
4 shall be liable civilly in accordance with this section:
5 (1) Section 13375 or 13376.
6 (2) Any waste discharge requirements or dredged or fill
7 material permit.
8 (3) Any requirements established pursuant to Section 13383.
9 (4) Any order or prohibition issued pursuant to Section 13243
10 or Article 1 (commencing with Section 13300) of Chapter 5, if the
11 activity subject to the order or prohibition is subject to regulation
12 under this chapter.
13 (5) Any requirements of Section 301, 302, 306, 307, 308, 318,
14 or 405 of the Clean Water Act, as amended.
15 (6) Any requirement imposed in a pretreatment program
16 approved pursuant to waste discharge requirements issued under
17 Section 13377 or approved pursuant to a permit issued by the
18 administrator.
19 (b) Civil liability may be imposed by the superior court in an
20 amount not to exceed the sum of both of the following:
21 (1) Twenty-five thousand dollars (\$25,000) for each day in
22 which the violation occurs.
23 (2) Where there is a discharge, any portion of which is not
24 susceptible to cleanup or is not cleaned up, and the volume
25 discharged but not cleaned up exceeds 1,000 gallons, an additional
26 liability not to exceed twenty-five dollars (\$25) multiplied by the
27 number of gallons by which the volume discharged but not cleaned
28 up exceeds 1,000 gallons.
29 The Attorney General, upon request of a regional board or the
30 state board, shall petition the superior court to impose the liability.

(c) Civil liability may be imposed administratively by the state board or a regional board pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 in an amount not to exceed the sum of both of the following:

(1) Ten thousand dollars (\$10,000) for each day in which the violation occurs.

(2) Where there is a discharge, any portion of which is not susceptible to cleanup or is not cleaned up, and the volume discharged but not cleaned up exceeds 1,000 gallons, an additional liability not to exceed ten dollars (\$10) multiplied by the number of gallons by which the volume discharged but not cleaned up exceeds 1,000 gallons.

(d) For purposes of subdivisions (b) and (c), the term “discharge” includes any discharge to navigable waters of the United States, any introduction of pollutants into a publicly owned treatment works, or any use or disposal of sewage sludge.

(e) In determining the amount of any liability imposed under this section, the regional board, the state board, or the superior court, as the case may be, shall take into account the nature, circumstances, extent, and gravity of the violation or violations, whether the discharge is susceptible to cleanup or abatement, the degree of toxicity of the discharge, and, with respect to the violator, the ability to pay, the effect on its ability to continue its business, any voluntary cleanup efforts undertaken, any prior history of violations, the degree of culpability, economic benefit or savings, if any, resulting from the violation, and other matters that justice may require. At a minimum, liability shall be assessed at a level that recovers the economic benefits, if any, derived from the acts that constitute the violation.

(f) (1) Except as provided in paragraph (2), for the purposes of this section, a single operational upset that leads to simultaneous violations of more than one pollutant parameter shall be treated as a single violation.

(2) (A) For the purposes of subdivisions (h) and (i), a single operational upset in a wastewater treatment unit that treats wastewater using a biological treatment process shall be treated as a single violation, even if the operational upset results in violations of more than one effluent limitation and the violations continue for a period of more than one day, if all of the following apply:

(i) The discharger demonstrates all of the following:

1 (I) The upset was not caused by wastewater treatment operator
2 error and was not due to discharger negligence.

3 (II) But for the operational upset of the biological treatment
4 process, the violations would not have occurred nor would they
5 have continued for more than one day.

6 (III) The discharger carried out all reasonable and immediately
7 feasible actions to reduce noncompliance with the applicable
8 effluent limitations.

9 (ii) The discharger is implementing an approved pretreatment
10 program, if so required by federal or state law.

11 (B) Subparagraph (A) only applies to violations that occur
12 during a period for which the regional board has determined that
13 violations are unavoidable, but in no case may that period exceed
14 30 days.

15 (g) Remedies under this section are in addition to, and do not
16 supersede or limit, any other remedies, civil or criminal, except
17 that no liability shall be recoverable under Section 13261, 13265,
18 13268, or 13350 for violations for which liability is recovered
19 under this section.

20 (h) (1) Notwithstanding any other provision of this division,
21 and except as provided in subdivisions (j), (k), and (l), a mandatory
22 minimum penalty of three thousand dollars (\$3,000) shall be
23 assessed for each serious violation.

24 (2) (A) For the purposes of this section, a “serious violation”
25 means any waste discharge that violates the effluent limitations
26 contained in the applicable waste discharge requirements for a
27 Group II pollutant, as specified in Appendix A to Section 123.45
28 of Title 40 of the Code of Federal Regulations, by 20 percent or
29 more or for a Group I pollutant, as specified in Appendix A to
30 Section 123.45 of Title 40 of the Code of Federal Regulations, by
31 40 percent or more.

32 (B) For the purposes of this section, a “serious violation” also
33 means a failure to file a report pursuant to Section 13383 with the
34 state board as required pursuant to a permit issued under the
35 national pollutant discharge elimination system (NPDES). A
36 serious violation pursuant to this subparagraph is subject to a
37 mandatory minimum penalty of three thousand dollars (\$3,000)
38 for each 30-day period that a report is not submitted as required.

39 (i) (1) Notwithstanding any other provision of this division,
40 and except as provided in subdivisions (j), (k), and (l), a mandatory

1 minimum penalty of three thousand dollars (\$3,000) shall be
2 assessed for each violation whenever the person does any of the
3 following four or more times in any period of six consecutive
4 months, except that the requirement to assess the mandatory
5 minimum penalty shall not be applicable to the first three
6 violations:

7 (A) Violates a waste discharge requirement effluent limitation.

8 (B) Fails to file a report pursuant to Section 13260.

9 (C) Files an incomplete report pursuant to Section 13260.

10 (D) Violates a toxicity discharge limitation contained in the
11 applicable waste discharge requirements where the waste
12 discharge requirements do not contain pollutant-specific effluent
13 limitations for toxic pollutants.

14 (2) For the purposes of this section, a “period of six
15 consecutive months” means the period commencing on the date
16 that one of the violations described in this subdivision occurs and
17 ending 180 days after that date.

18 (j) Subdivisions (h) and (i) do not apply to any of the following:

19 (1) A violation caused by one or any combination of the
20 following:

21 (A) An act of war.

22 (B) An unanticipated, grave natural disaster or other natural
23 phenomenon of an exceptional, inevitable, and irresistible
24 character, the effects of which could not have been prevented or
25 avoided by the exercise of due care or foresight.

26 (C) An intentional act of a third party, the effects of which
27 could not have been prevented or avoided by the exercise of due
28 care or foresight.

29 (D) (i) The operation of a new or reconstructed wastewater
30 treatment unit during a defined period of adjusting or testing, not
31 to exceed 90 days for a wastewater treatment unit that relies on a
32 biological treatment process and not to exceed 30 days for any
33 other wastewater treatment unit, if all of the following
34 requirements are met:

35 (I) The discharger has submitted to the regional board, at least
36 30 days in advance of the operation, an operations plan that
37 describes the actions the discharger will take during the period of
38 adjusting and testing, including steps to prevent violations and
39 identifies the shortest reasonable time required for the period of
40 adjusting and testing, not to exceed 90 days for a wastewater

1 treatment unit that relies on a biological treatment process and not
2 to exceed 30 days for any other wastewater treatment unit.

3 (II) The regional board has not objected in writing to the
4 operations plan.

5 (III) The discharger demonstrates that the violations resulted
6 from the operation of the new or reconstructed wastewater
7 treatment unit and that the violations could not have reasonably
8 been avoided.

9 (IV) The discharger demonstrates compliance with the
10 operations plan.

11 (V) In the case of a reconstructed wastewater treatment unit,
12 the unit relies on a biological treatment process that is required to
13 be out of operation for at least 14 days in order to perform the
14 reconstruction, or the unit is required to be out of operation for at
15 least 14 days and, at the time of the reconstruction, the cost of
16 reconstructing the unit exceeds 50 percent of the cost of replacing
17 the wastewater treatment unit.

18 (ii) For the purposes of this section, “wastewater treatment
19 unit” means a component of a wastewater treatment plant that
20 performs a designated treatment function.

21 (2) (A) Except as provided in subparagraph (B), a violation of
22 an effluent limitation where the waste discharge is in compliance
23 with either a cease and desist order issued pursuant to Section
24 13301 or a time schedule order issued pursuant to Section 13300,
25 if all of the following requirements are met:

26 (i) The cease and desist order or time schedule order is issued
27 after January 1, 1995, but not later than July 1, 2000, specifies the
28 actions that the discharger is required to take in order to correct the
29 violations that would otherwise be subject to subdivisions (h) and
30 (i), and the date by which compliance is required to be achieved
31 and, if the final date by which compliance is required to be
32 achieved is later than one year from the effective date of the cease
33 and desist order or time schedule order, specifies the interim
34 requirements by which progress towards compliance will be
35 measured and the date by which the discharger will be in
36 compliance with each interim requirement.

37 (ii) The discharger has prepared and is implementing in a
38 timely and proper manner, or is required by the regional board to
39 prepare and implement, a pollution prevention plan that meets the
40 requirements of Section 13263.3.

1 (iii) The discharger demonstrates that it has carried out all
2 reasonable and immediately feasible actions to reduce
3 noncompliance with the waste discharge requirements applicable
4 to the waste discharge and the executive officer of the regional
5 board concurs with the demonstration.

6 (B) Subdivisions (h) and (i) shall become applicable to a waste
7 discharge on the date the waste discharge requirements applicable
8 to the waste discharge are revised and reissued pursuant to Section
9 13380, unless the regional board does all of the following on or
10 before that date:

11 (i) Modifies the requirements of the cease and desist order or
12 time schedule order as may be necessary to make it fully consistent
13 with the reissued waste discharge requirements.

14 (ii) Establishes in the modified cease and desist order or time
15 schedule order a date by which full compliance with the reissued
16 waste discharge requirements shall be achieved. For the purposes
17 of this subdivision, the regional board may not establish this date
18 later than five years from the date the waste discharge
19 requirements were required to be reviewed pursuant to Section
20 13380. If the reissued waste discharge requirements do not add
21 new effluent limitations or do not include effluent limitations that
22 are more stringent than those in the original waste discharge
23 requirements, the date shall be the same as the final date for
24 compliance in the original cease and desist order or time schedule
25 order or five years from the date that the waste discharge
26 requirements were required to be reviewed pursuant to Section
27 13380, whichever is earlier.

28 (iii) Determines that the pollution prevention plan required by
29 clause (ii) of subparagraph (A) is in compliance with the
30 requirements of Section 13263.3 and that the discharger is
31 implementing the pollution prevention plan in a timely and proper
32 manner.

33 (3) A violation of an effluent limitation where the waste
34 discharge is in compliance with either a cease and desist order
35 issued pursuant to Section 13301 or a time schedule order issued
36 pursuant to Section 13300 or Section 13308, if all of the following
37 requirements are met:

38 (A) The cease and desist order or time schedule order is issued
39 on or after July 1, 2000, and specifies the actions that the

1 discharger is required to take in order to correct the violations that
2 would otherwise be subject to subdivisions (h) and (i).

3 (B) The regional board finds that, for one of the following
4 reasons, the discharger is not able to consistently comply with one
5 or more of the effluent limitations established in the waste
6 discharge requirements applicable to the waste discharge:

7 (i) The effluent limitation is a new, more stringent, or modified
8 regulatory requirement that has become applicable to the waste
9 discharge after the effective date of the waste discharge
10 requirements and after July 1, 2000, new or modified control
11 measures are necessary in order to comply with the effluent
12 limitation, and the new or modified control measures cannot be
13 designed, installed, and put into operation within 30 calendar days.

14 (ii) New methods for detecting or measuring a pollutant in the
15 waste discharge demonstrate that new or modified control
16 measures are necessary in order to comply with the effluent
17 limitation and the new or modified control measures cannot be
18 designed, installed, and put into operation within 30 calendar days.

19 (iii) Unanticipated changes in the quality of the municipal or
20 industrial water supply available to the discharger are the cause of
21 unavoidable changes in the composition of the waste discharge,
22 the changes in the composition of the waste discharge are the cause
23 of the inability to comply with the effluent limitation, no
24 alternative water supply is reasonably available to the discharger,
25 and new or modified measures to control the composition of the
26 waste discharge cannot be designed, installed, and put into
27 operation within 30 calendar days.

28 (iv) The discharger is a publicly owned treatment works
29 located in Orange County that is unable to meet effluent
30 limitations for biological oxygen demand, suspended solids, or
31 both, because the publicly owned treatment works meets all of the
32 following criteria:

33 (I) Was previously operating under modified secondary
34 treatment requirements pursuant to Section 301(h) of the Clean
35 Water Act (33 U.S.C. Sec. 1311(h)).

36 (II) Did vote on July 17, 2002, not to apply for a renewal of the
37 modified secondary treatment requirements.

38 (III) Is in the process of upgrading its treatment facilities to
39 meet the secondary treatment standards required by Section

1 301(b)(1)(B) of the Clean Water Act (33 U.S.C. Sec.
2 1311(b)(1)(B)).

3 (C) The regional board establishes a time schedule for bringing
4 the waste discharge into compliance with the effluent limitation
5 that is as short as possible, taking into account the technological,
6 operational, and economic factors that affect the design,
7 development, and implementation of the control measures that are
8 necessary to comply with the effluent limitation. For the purposes
9 of this subdivision, the time schedule may not exceed five years in
10 length, except that the time schedule may not exceed 10 years in
11 length for the upgrade described in subparagraph (B)(iv)(III). If
12 the time schedule exceeds one year from the effective date of the
13 order, the schedule shall include interim requirements and the
14 dates for their achievement. The interim requirements shall
15 include both of the following:

16 (i) Effluent limitations for the pollutant or pollutants of
17 concern.

18 (ii) Actions and milestones leading to compliance with the
19 effluent limitation.

20 (D) The discharger has prepared and is implementing in a
21 timely and proper manner, or is required by the regional board to
22 prepare and implement, a pollution prevention plan pursuant to
23 Section 13263.3.

24 (k) In lieu of assessing all or a portion of the mandatory
25 minimum penalties pursuant to subdivisions (h) and (i) against a
26 publicly owned treatment works (POTW) serving a small
27 community, as defined by subdivision (b) of Section 79084, the
28 state board or the regional board may elect to require the POTW
29 to spend an equivalent amount towards the completion of a
30 compliance project proposed by the POTW, if the state or regional
31 board finds all of the following:

32 (1) The compliance project is designed to correct the violations
33 within five years.

34 (2) The compliance project is in accordance with the
35 enforcement policy of the state board.

36 (3) The POTW has demonstrated that it has sufficient funding
37 to complete the compliance project.

38 (l) (1) In lieu of assessing penalties pursuant to subdivision (h)
39 or (i), the state board or regional board, with the concurrence of the
40 discharger, may direct a portion of the penalty amount to be

1 expended on a supplemental environmental project in accordance
2 with the enforcement policy of the state board. If the penalty
3 amount exceeds fifteen thousand dollars (\$15,000), the portion of
4 the penalty amount that may be directed to be expended on a
5 supplemental environmental project may not exceed fifteen
6 thousand dollars (\$15,000) plus 50 percent of the penalty amount
7 that exceeds fifteen thousand dollars (\$15,000).

8 (2) For the purposes of this section, a “supplemental
9 environmental project” means an environmentally beneficial
10 project that a person agrees to undertake, with the approval of the
11 regional board, that would not be undertaken in the absence of an
12 enforcement action under this section.

13 (3) This subdivision applies to the imposition of penalties
14 pursuant to subdivision (h) or (i) on or after January 1, 2003,
15 without regard to the date on which the violation occurs.

16 (m) The Attorney General, upon request of a regional board or
17 the state board, shall petition the appropriate court to collect any
18 liability or penalty imposed pursuant to this section. Any person
19 who fails to pay on a timely basis any liability or penalty imposed
20 under this section shall be required to pay, in addition to that
21 liability or penalty, interest, attorneys’ fees, costs for collection
22 proceedings, and a quarterly nonpayment penalty for each quarter
23 during which the failure to pay persists. The nonpayment penalty
24 shall be in an amount equal to 20 percent of the aggregate amount
25 of the person’s penalty and nonpayment penalties that are unpaid
26 as of the beginning of the quarter.

27 (n) (1) Subject to paragraph (2), funds collected pursuant to
28 this section shall be deposited in the State Water Pollution Cleanup
29 and Abatement Account.

30 (2) Funds collected pursuant to subparagraph (B) of paragraph
31 (2) of subdivision (h) for a failure to file a report shall be deposited
32 in ~~a subaccount~~ of the State Water Pollution Cleanup and
33 Abatement Account for expenditure by the state board, upon
34 appropriation by the Legislature, to carry out this division.

35 (o) (1) The state board shall report annually to the Legislature
36 regarding its enforcement activities. The reports shall include all
37 of the following:

38 (A) A compilation of the number of violations of waste
39 discharge requirements in the previous year.

1 (B) A record of the formal and informal compliance and
2 enforcement actions taken for each violation.

3 (C) An analysis of the effectiveness of current enforcement
4 policies, including mandatory minimum penalties.

5 (D) Recommendations, if any, necessary for improvements to
6 the enforcement program in the following year.

7 (2) The report shall be submitted to the Chairperson of the
8 Assembly Committee on Environmental Safety and Toxic
9 Materials and the Chairperson of the Senate Committee on
10 Environmental Quality on or before March 1, 2001, and annually
11 thereafter.

12 (p) The amendments made to subdivisions (f), (h), (i), and (j)
13 during the second year of the 2001–02 Regular Session apply only
14 to violations that occur on or after January 1, 2003.

